Shetron Limited Vs. Commissioner of Customs(Port-export), Chennai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Jan-04-2013

Judge : The Honourable Mr. P.K. Das, Judicial Member

Appeal No. : Appeal No. C/257/2012 [Arising out of Order-in-Appeal C.Cus.No.929/2012 dt. 17.8.2012 passed by the Commissioner of Customs (Appeals), Chennai]

Appellant : Shetron Limited

Respondent : Commissioner of Customs(Port-export), Chennai

Judgement :

This is the second round of litigation before the Tribunal. By Order No.507/2004 dt. 1.3.2004, the Tribunal remanded back the matter to the original authority to re-adjudicate as under :-

We have considered the submissions made by both sides. We find that the Circulars issued by the Board are binding on the Departmental authorities. In this case, the circular No.62/99-cus dt. 17.9.99 was issued by the Board clarifying the issue involved in the present appeals. In para 3 of the said circular, it is clarified that revised interest effective from 12.5.99 is applicable in respect of goods warehoused prior to that date, but only from the expiry of six months or 12.5.99 whichever is later. Wherever goods have been allowed to be removed from the warehouse on or after 12.5.99 may be reviewed and decided in the light of these instructions. In view of these clear-cut instructions, the order of the Commissioner (Appeals) and Assistant commissioner of Customs are set aside and matter is remanded back to the Original authority to re-adjudicate the case in the light of the Boards above said circular.

2. In the remand proceedings, the Deputy Commissioner of Customs (Refunds) rejected 14 numbers of refund claims of interest on warehoused goods on the ground of non-submission of documents relating to the principles of unjust enrichment viz. audited balance sheet for the relevant period so as to verify whether the claimant had not passed on the incidence of interest thereon, if any, to any other person. By the impugned order, Commissioner (Appeals) set aside the lower authoritys order with the direction to the appellant to produce all the necessary documents as required by the lower authority to decide the case both on merit and on unjust enrichment as to how the incidence of interest was not passed on to any other person.

3. The learned advocate submits that it has already been settled by series of decisions that provisions of Section 27 of the Customs Act, 1962 is not applicable to refund of interest covered under Section 61 (3) of the Customs Act. He relied upon the decisions as under :-

a) Ashok Leyland Ltd. Vs CC Chennai- 2001 (138) ELT 339 (Tri.-Chennai) passed by the Tribunal and upheld by the Honbel Supreme Court as reported in 2002 (141) ELT A182 (SC)

b) CC (Imports) Mumbai Vs Amtrex Hitachi App Ltd. -2008 (224) ELT 292 (Tri.-Mumbai)

c) J.K.Synthetics Ltd. Vs CC Jaipur 1999 (109) ELT 669 (Tri.)

4. The learned Joint Commissioner (AR) submits that the Commissioner has rightly remanded the matter to the adjudicating lower authority in respect of supplying documents for the unjust enrichment.

5. After hearing both sides, I find that the appellant did not place decisions of the Tribunal which was upheld by the Honble Supreme Court on this issue before the

lower authority and the Commissioner (Appeals). However, the Commissioner (Appeals) remanded the matter to the lower authority to decide the case both on merits and on unjust enrichment. In this context, it is proper that the lower authority should examine the decision of the Tribunal as upheld by the Honble Supreme Court on this issue in the context of applicability of the unjust enrichment. In view of that, the order of the Commissioner (appeals) is upheld with a direction that the lower authority would examine the applicability of unjust enrichment with the case law. The appeal is disposed in the above terms.